

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:5

PLR-109050-20

Date:

September 17, 2020

Legend

Parent =

CFC1 =

CFC2 =

DE =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated March 26, 2020, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent to file the election statement described in §1.362-4(d)(3) (the "Section 362(e)(2)(C) Statement") with respect to CFC1's transfer of certain assets and liabilities to CFC2 as described below. The material information is summarized below.

Parent is the common parent of a consolidated group. Immediately before Date 1, Parent indirectly owned CFC1, and CFC1 owned CFC2 through DE, a disregarded entity for federal income tax purposes. Each of CFC1 and CFC2 was a controlled foreign corporation within the meaning of section 957(a).

Effective Date 1, CFC2 elected to change its entity classification from a foreign disregarded entity to a foreign corporation for federal income tax purposes (the "Entity Classification Election"). As a result of the Entity Classification Election, CFC1 was deemed to contribute all the assets and liabilities of CFC2 (when it was a foreign disregarded entity) to CFC2 in exchange for stock of CFC2 in a transaction described under section 351 (the "Transfer"). See §§301.7701-3(g)(1)(iv) and 301.7701-3(g)(2)(i). At the time of the Transfer, the assets transferred had a tax basis exceeding fair market value.

Section 362(e)(2)(A) generally provides that if property is transferred to a corporation as a capital contribution or in an exchange to which section 351 applies and the aggregate adjusted basis of the transferred property would, but for that provision, exceed the fair market value of such property immediately after the transaction, then the transferee corporation's basis in such property shall not exceed the fair market value of such property.

Under section 362(e)(2)(C), however, the transferor and transferee may make a joint election to reduce the transferor's basis in the stock received to its fair market value, and no reduction of the transferee's basis in the property received will be required. Section 362(e)(2)(C) provides that such election shall be made at such time and in such form and manner as the Secretary may prescribe and, once made, shall be irrevocable.

Generally, for transactions after September 3, 2013, rules for making elections under section 362(e)(2)(C) are in §1.362-4(d)(3). Date 1 is a date after September 3, 2013. In order to make the election under section 362(e)(2)(C), §1.362-4(d)(1)(i) requires that prior to the filing of the Section 362(e)(2)(C) Statement, the transferor and the acquiring corporation enter into a written, binding agreement to elect to apply section 362(e)(2)(C), and §1.362-4(d)(1)(ii) requires that the Section 362(e)(2)(C) Statement be filed in accordance with the provisions of §1.362-4(d)(3).

Section 1.362-4(d)(3)(ii)(A) provides that if the transferor is required to file a U.S. federal income tax return, the Section 362(e)(2)(C) Statement is filed by the transferor. Section 1.362-4(d)(3)(ii)(B) provides that if §1.362-4(d)(3)(ii)(A) does not apply and the

transferor is a CFC on the date of the transfer, all of the transferor's controlling U.S. shareholders (in the case of a CFC) must include the Section 362(e)(2)(C) Statement on or with their timely filed (including extensions) original U.S. returns for their taxable years in which the transfer occurred.

The Section 362(e)(2)(C) Statement was required to be filed on or with Parent's timely filed income tax return for the year ending Date 2. For various reasons, however, Parent failed to file the Section 362(e)(2)(C) Statement in a timely manner. Parent has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time Parent requested relief, and the new position requires or permits the election for which relief is requested.

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of §301.9100-2. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

The time for filing the Section 362(e)(2)(C) Statement is fixed by §1.362-4(d)(3)(ii). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the Section 362(e)(2)(C) Statement, provided Parent acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances surrounding the failure to timely file the Section 362(e)(2)(C) Statement. The information establishes that the request for relief was filed before the failure to timely file the Section 362(e)(2)(C) Statement was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Taxpayer acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will

not prejudice the interests of the government. Accordingly, an extension of time is granted under §301.9100-3, until 90 days from the date on this letter, for Parent to file the Section 362(e)(2)(C) Statement regarding the Transfer, in the manner described in §1.362-4(d)(3).

This extension of time is conditioned on the federal tax liability (if any) of any relevant party not being lower, in the aggregate, for all years to which the section 362(e)(2)(C) election applies than it would have been if the Section 362(e)(2)(C) Statement had been timely filed (taking into account the time value of money). No opinion is expressed as to any tax liabilities for the years involved. A determination thereof will be made by the Director's office upon audit of the federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction discussed in this letter. Specifically, no opinion is expressed concerning the basis or fair market value of any asset, whether the Transfer is described in section 351, or whether Parent is substantively entitled to make a section 362(e)(2)(C) election. In addition, no opinion is expressed as to the tax effects or consequences of filing the Section 362(e)(2)(C) Statement late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Section 362(e)(2)(C) Statement late that are not specifically set forth in the above ruling.

For purposes of granting relief under §301.9100-3, we have relied on certain statements and representations that Parent, Company Official, and Tax Professional made under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under §301.9100-3 to file the Section 362(e)(2)(C) Statement, any penalties and interest that would otherwise be applicable still apply.

The letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Thomas I. Russell  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Corporate)

cc: